

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PERLA CARR,

Plaintiff,

v.

MONTGOMERY COUNTY, TEXAS, *et al.*,

Defendants.

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CIVIL ACTION H-13-2795

ORDER

Pending before the court is plaintiff's request for reconsideration of the court's order (Dkt. 25) from October 2014 granting in part and denying in part defendants' motion to dismiss. Dkt. 48. Plaintiff asserts that Montgomery County Constable Kenneth Hayden's personal participation and direction in the search and arrest at her home creates potential liability for Montgomery County based on the single incident. *Id.* at 2.

In a motion to reconsider an order of the court, the court applies Federal Rule of Civil Procedure Rule 60(b). Plaintiff claims her motion is based on new evidence from a deposition and new law. However, plaintiff does not clearly indicate what new facts the deposition produced or how they would change the court's decision. And, the cases plaintiff relies on are several years old. *Id.* at 1. In sum, it appears that plaintiff simply disagrees with the court's decision. Even the residual clause in Rule 60(b)(6) allowing relief for "any other reason that justifies relief" does not apply in this case.


Even if the court considered the merits of plaintiff's argument, however, the court could not grant her motion. As plaintiff points out herself, Texas law determines who is a policymaker. Dkt. 48 at 6. Texas law is clear that a county constable cannot be a policymaker for the county. *Tonkin*

v. Harris Cnty. Tex., 257 F. App'x 762, 763 (2007) (unpublished); *Rhode v. Denson*, 776 F.2d 107, 109 (5th Cir. 1985) (county constable lacked power to make county policy). Therefore, plaintiff's claim that Constable Kenneth Hayden is a policymaker for Montgomery County fails.

For these reasons, plaintiff's motion for reconsideration (Dkt. 48) is **DENIED**.

It is so **ORDERED**.

Signed at Houston, Texas on July 17, 2015.



Gray H. Miller
United States District Judge